

# COMMITTEE REPORT

## MADAM PRESIDENT:

**The Senate Committee on Commerce and Transportation, to which was referred House Bill No. 1190, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:**

- 1       Page 1, delete lines 1 through 17.
- 2       Page 2, delete lines 1 through 2.
- 3       Page 2, between lines 7 and 8, begin a new paragraph and insert:
- 4       "SECTION 2. IC 7.1-3-7.5-3 IS AMENDED TO READ AS
- 5       FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. The holder of a
- 6       farm winery brandy distiller's permit may do the following:
- 7           (1) Manufacture brandy.
- 8           (2) Rectify brandy.
- 9           (3) Bottle brandy.
- 10          (4) Use brandy that it has manufactured for the purpose of
- 11          producing fortified wine.
- 12          (5) Sell, transport, and deliver brandy that it has manufactured to
- 13          other wineries.
- 14          (6) Sell brandy at ~~wholesale~~ or retail on the permitted
- 15          premises."
- 16       Page 4, line 12, delete "After June 30, 2006, the commission may
- 17       issue a wine" and insert "**The holder of a farm winery permit that**
- 18       **also holds a wine wholesaler permit issued under**
- 19       **IC 7.1-4-4.1-13(c), may locate the wine wholesaler business within**
- 20       **the licensed premises of the farm winery."**

Page 4, delete lines 13 through 41, begin a new paragraph and insert:  
 "SECTION 7. IC 7.1-3-26 IS ADDED TO THE INDIANA CODE  
 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 UPON PASSAGE]:

**Chapter 26. Direct Wine Seller's Permit**

**Sec. 1. As used in this chapter, "applicant" means a person that applies to the commission for a direct wine seller's permit.**

**Sec. 2. As used in this chapter, "consumer" means an individual who purchases wine from a seller.**

**Sec. 3. As used in this chapter, "seller" means the holder of a direct wine seller's permit issued under this chapter.**

**Sec. 4. A person located within Indiana or outside Indiana that wants to sell wine directly to a consumer must be the holder of a direct wine seller's permit and comply with this chapter.**

**Sec. 5. A seller may sell only wine directly to a consumer who meets all of the following requirements:**

- (1) The consumer is at least twenty-one (21) years of age.**
- (2) The consumer is an Indiana resident.**
- (3) The consumer does not hold an interest in an alcoholic beverage permit issued under this title.**
- (4) The consumer has not been convicted within the last ten (10) years of any state or federal crime relating to:**
  - (A) providing alcoholic beverages to a minor;**
  - (B) engaging in commerce in alcoholic beverages or the transportation of alcoholic beverages; or**
  - (C) acquiring alcoholic beverages.**
- (5) The consumer intends to use wine purchased under this chapter for personal consumption only and not for resale or other commercial purposes.**
- (6) Except as provided in subdivision (7), the consumer has certified to the seller in a face-to-face transaction at the seller's place of business all the following:**
  - (A) Name, telephone number, residence address, or consumer's business address.**
  - (B) Proof of age by an Indiana issued driver's license or identification card showing the consumer to be at least twenty-one (21) years of age.**

1           (C) A statement, made under penalties for perjury, that the  
2           consumer satisfies the requirements of subdivisions (1)  
3           through (5).

4           (7) If, before July 1, 2006, the consumer has provided to the  
5           seller in a face-to-face transaction at the seller's place of  
6           business the consumer's:

- 7           (A) name;
- 8           (B) telephone number;
- 9           (C) residence address; or
- 10          (D) business address;

11          the seller may sell wine directly to a consumer who has not  
12          complied with subdivision (6).

13          Sec. 6. The commission may issue a direct wine seller's permit  
14          to an applicant who meets all of the following requirements:

15          (1) The applicant is domiciled and has its principal place of  
16          business in the United States.

17          (2) The applicant is engaged in the manufacture of wine.

18          (3) The applicant holds and acts within the scope of authority  
19          of an alcoholic beverage license or permit to manufacture  
20          wine or import wine that is required:

21          (A) in Indiana or the state where the applicant is  
22          domiciled; and

23          (B) by the Tax and Trade Bureau of the United States  
24          Department of the Treasury.

25          (4) The applicant qualifies with the secretary of state to do  
26          business in Indiana and consents to the personal jurisdiction  
27          of the commission and the courts of Indiana.

28          (5) The applicant files a surety bond with the commission in  
29          accordance with IC 7.1-3-1 in the amount required of an  
30          applicant for a vintner's permit under IC 7.1-3-1-7.

31          (6) The applicant:

32          (A) does not hold a permit or license to wholesale alcoholic  
33          beverages (other than a permit or license to retail alcoholic  
34          beverages at the applicant's permitted premises) issued by  
35          any authority; and

36          (B) is not owned in whole or in part by a person who holds  
37          a permit or license to wholesale or retail alcoholic

1           beverages.

2           (7) The applicant produces not more than five hundred  
3           thousand (500,000) gallons of wine per year that are sold  
4           within Indiana.

5           (8) The applicant has not distributed wine through a wine  
6           wholesaler in Indiana within the thirty (30) days immediately  
7           preceding the applicant's initial application for a direct wine  
8           seller's permit or the applicant has operated as a farm winery  
9           under IC 7.1-3-12.

10          (9) The applicant is not the parent, subsidiary, or affiliate of  
11          another entity manufacturing any alcoholic beverage.

12          (10) The applicant completes documentation regarding the  
13          applicant's application required by the commission.

14          Sec. 7. (a) The term of a direct wine seller's permit begins on  
15          July 1 and expires on June 30 of the following year. A direct wine  
16          seller's permit may be renewed in accordance with rules adopted  
17          by the commission.

18          (b) The annual direct wine seller's permit fee is one hundred  
19          dollars (\$100).

20          Sec. 8. A direct wine seller's permit entitles a seller to sell wine  
21          to a consumer by receiving and filling orders that the consumer  
22          transmits by electronic or other means if all of the following  
23          conditions are satisfied before the sale or by the times set forth as  
24          follows:

25               (1) The consumer provides the direct wine seller with the  
26               following:

27                   (A) The verification required by section 5(6) of this chapter  
28                   in an initial face-to-face transaction.

29                   (B) Notwithstanding clause (A), if the consumer provided  
30                   the information specified in section 5(7) of this chapter in  
31                   an initial face-to-face transaction with the seller before  
32                   July 1, 2006, the consumer is not required to comply with  
33                   section 5(6) of this chapter.

34               (2) The direct wine seller maintains for two (2) years, all  
35               records of wine sales made under this chapter. If the records  
36               are requested by the commission, a direct wine seller shall  
37               make the records available to the commission during the

1           direct wine seller's regular business hours.

2           (3) The direct wine seller stamps, prints, or labels on the  
3           outside of the shipping container the following: "CONTAINS  
4           WINE. SIGNATURE OF PERSON AGE 21 OR OLDER  
5           REQUIRED FOR DELIVERY".

6           (4) The direct wine seller causes the wine to be delivered by  
7           the holder of a valid carrier's alcoholic beverage permit under  
8           IC 7.1-3-18.

9           (5) The direct wine seller causes the carrier to verify the  
10          individual personally receiving the wine shipment is at least  
11          twenty-one (21) years of age.

12          (6) The direct wine seller does not ship the consumer more  
13          than two hundred sixteen (216) liters of wine in any calendar  
14          year.

15          (7) The direct wine seller remits to the department of state  
16          revenue monthly all Indiana excise, sales, and use taxes on the  
17          shipments made into Indiana by the direct wine seller during  
18          the previous month.

19          Sec. 9. It is unlawful for the holder of a farm winery brandy  
20          distiller's permit to ship or cause to be shipped brandy produced  
21          under this title to a consumer.

22          Sec. 10. A consumer shall provide the direct wine seller with  
23          information the direct wine seller reasonably requires, including  
24          the consumer's name, home street address, telephone number, and  
25          other information required by the commission. The consumer shall  
26          also verify under penalties for perjury to the direct wine seller that  
27          the consumer satisfies every requirement of section 6 of this  
28          chapter.

29          Sec. 11. During a permit year, a direct wine seller may not  
30          direct ship in Indiana more than nine thousand (9,000) liters of  
31          wine.

32          Sec. 12. A wine shipment purchased under this chapter must be  
33          delivered to:

34               (1) the consumer, who shall take personal delivery of the  
35               shipment at the:

36                     (A) consumer's residence;

37                     (B) consumer's business address;

- 1 (C) carrier's business address; or
- 2 (D) address displayed on the shipping container; or
- 3 (2) an individual who is at least twenty-one (21) years of age
- 4 who shall take personal delivery of the shipment at:
- 5 (A) consumer's residence;
- 6 (B) consumer's business address; or
- 7 (C) address displayed on the shipping container.

8 **Sec. 13. A consumer may not receive more than two hundred**  
 9 **sixteen (216) liters of wine in total from one (1) or more direct wine**  
 10 **sellers in a calendar year.**

11 **Sec. 14. (a) Except as provided in subsections (b) and (c), a**  
 12 **person who knowingly or intentionally violates this chapter**  
 13 **commits a Class C misdemeanor.**

14 **(b) A person who:**  
 15 **(1) knowingly or intentionally violates this chapter; and**  
 16 **(2) has one (1) prior unrelated conviction under this section**  
 17 **for an act or omission that occurred not more than ten (10)**  
 18 **years before the act or omission that is the basis for the most**  
 19 **recent violation;**  
 20 **commits a Class A misdemeanor.**

21 **(c) A person who:**  
 22 **(1) knowingly or intentionally violates this chapter; and**  
 23 **(2) has at least two (2) prior unrelated convictions under this**  
 24 **section for acts or omissions that occurred not more than ten**  
 25 **(10) years before the act or omission that is the basis for the**  
 26 **most recent violation;**  
 27 **commits a Class D felony.**

28 **Sec. 15. If a direct wine seller is charged under section 14 of this**  
 29 **chapter with selling to a consumer who does not meet the**  
 30 **requirements of section 5(1), 5(3), 5(4), or 5(5) of this chapter, it is**  
 31 **a defense to the charge if the direct wine seller obtained from the**  
 32 **consumer the affidavit required under section 5(6)(C) of this**  
 33 **chapter and produces a copy of the affidavit.**

34 **SECTION 8. IC 7.1-4-4.1-13 IS AMENDED TO READ AS**  
 35 **FOLLOWS[EFFECTIVE UPON PASSAGE]: Sec. 13. (a) This section**  
 36 **applies to the following permits:**

- 37 (1) Beer wholesaler's permit.

- (2) Malt wholesaler's permit.
- (3) Liquor wholesaler's permit.
- (4) Wine wholesaler's permit.

(b) **Except as provided in subsection (c)**, a permit fee of two thousand dollars (\$2,000) is annually imposed for the issuance of each of the permits described in subsection (a).

(c) **A permit fee of one hundred dollars (\$100) is annually imposed for the issuance of a wine wholesaler's permit to a permit applicant who:**

- (1) has never previously held a wine wholesaler's permit and anticipates selling less than twelve thousand (12,000) gallons of wine in a year; or**
- (2) previously held a wine wholesaler's permit and certifies to the commission that the permit applicant sold less than twelve thousand (12,000) gallons of wine in the previous year.**

SECTION 9. IC 7.1-4-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. ~~Power of Commission and Department.~~ The chairman and the department shall have the power to examine the books, papers, records, and premises of a manufacturer, wholesaler, retailer, ~~or dealer,~~ **or direct wine shipper's permit holder** under this title for the purpose of determining whether the excise taxes imposed by this title have been paid fully and whether the provisions of the title are being complied with.

SECTION 10. IC 7.1-4-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. ~~Collection of Annual License Fees.~~ The chairman shall collect the required annual license fee paid in connection with the issuance of a brewer's permit, a beer wholesaler's permit, a temporary beer permit, a dining car permit of any type, a boat permit of any type, a distiller's permit, a rectifier's permit, a liquor wholesaler's permit, a vintner's permit, a farm winery permit, a farm winery brandy distiller's permit, a wine wholesaler's permit, a wine bottler's permit, a temporary wine permit, **a direct wine shipper's permit**, a salesman's permit, and a carrier's alcoholic permit.

SECTION 11. IC 7.1-5-11-1.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1.5. (a) **Except as provided in IC 7.1-3-26**, it is unlawful for a person in the business of selling alcoholic beverages in ~~another state or country~~ **Indiana or**

1     **outside Indiana** to ship or cause to be shipped an alcoholic beverage  
 2     directly to ~~an Indiana resident~~ **a person in Indiana** who does not hold  
 3     a valid wholesaler permit under this title. This includes the ordering and  
 4     selling of alcoholic beverages over a computer network (as defined by  
 5     IC 35-43-2-3(a)).

6     (b) Upon a determination by the commission that a person has  
 7     violated subsection (a), a wholesaler may not accept a shipment of  
 8     alcoholic beverages from the person for a period of up to one (1) year  
 9     as determined by the commission.

10    (c) The commission shall adopt rules under IC 4-22-2 to implement  
 11    this section.

12    SECTION 12. IC 7.1-5-11-15 IS AMENDED TO READ AS  
 13    FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. ~~Transportation~~  
 14    ~~of Unowned Goods Limited~~. It is unlawful for a person to import or  
 15    transport an alcoholic beverage that is not at that time the absolute  
 16    property of an authorized permittee under this title. This section shall  
 17    not apply to the shipment of an alcoholic beverage from another state  
 18    in continuous transit through this state into another state unless the  
 19    shipment is intended to evade a provision of this title. This section shall  
 20    not prohibit a person, other than permittee, from bringing into this state  
 21    a quantity of liquor or wine not exceeding ~~one (1) quart~~ **eighteen (18)**  
 22    **liters** if ~~he~~ **the person** is a traveler in the ordinary course of travel and  
 23    if it is not intended for sale to another person."

24    Page 5, after line 1, begin a new paragraph and insert:

25    "SECTION 14. **An emergency is declared for this act.**".

26    Renumber all SECTIONS consecutively.

(Reference is to HB 1190 as printed January 24, 2006.)

**and when so amended that said bill do pass.**

Committee Vote: Yeas 10, Nays 0.

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**Landske**

**Chairperson**